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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,952	01/25/2002	James W. McCaherty	8350.0763-00	6974
22852	7590	03/24/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			FISHER, MICHAEL J	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,952

Applicant(s)

MCCAHERTY, JAMES W.

Examiner

Michael J. Fisher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15,31 and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 15 and 31, there is no way to know where to get the "standard deviation" and thus, there is no way to determine how to obtain an offset and therefore, there is no way to subtract the offset and thus, the claim will not be examined on the merits as the examiner is unclear how to do so.

Claim 41 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is no way to determine how to schedule maintenance based on the analysis.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15,31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 15 and 31 recite the limitation "the standard deviation" in line 3 of both. There is insufficient antecedent basis for this limitation in these claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,7,11-13,16- 19,23,27-29,32-37 and 40, are rejected under 35 U.S.C. 102(b) as being anticipated by US PAT 4,605,081 to Helmly, Jr. et al. (Helmly).

As to claims 1,17,33, Helmly discloses a computerized (fig 1) method for analyzing compliance with payload standard comprising a module for determining a target payload (160, as best seen in fig 5), obtaining weight data for equipment (158, as best seen in fig 5), a module for comparing the two and analyzing compliance (168, 166, as best seen in fig 5) and a module for outputting the results (fig 4).

As to claim 40, it would be done periodically (whenever it needed to be done). The loading practice would be modified based on the target payload (the amount dispensed).

As to claims 2,18, Helmly discloses analyzing compliance (168, 166, as best seen in fig 5), analyzing compliance with a second payload standard (length of truck, 164, as best seen in fig 5) not equal to the first (weight).

As to claims 3,19, the target payload is based on type of payload (abstract, lines 8-13), it is inherent that different payloads would have different legal limits.

As to claims 7,23, as there is only one piece of equipment the mean would be the same as the payload value of the truck, so this would inherently be calculated, the standard deviation would be zero, as there is no deviation as there is only one truck weighed, the distribution of payloads would be the value of the one payload, these values, while not expressly discussed, would inherently be calculated as they are the values determined in the steps.

As to claims 11,27, Helmly discloses providing a compliance rating based on the comparison ("...within allowable weight", col 7, lines 43-51).

As to claims 12,28 Helmly determines the payload on a predetermined factor (maximum allowable weight).

As to claims 13,29 Helmly discloses graphically illustrating the results (fig 4).

As to claims 16,32, Helmly discloses determining equipment identification (col 5, lines 17-28).

As to claims 34, 35, there is a network connection (fig 1).

As to claim 36, the output module is connected to a device to send data over a network (fig 1).

As to claim 37, there is shown to be a payload database (inherent in that the system is shown to have payload weight information, col 2, lines 4-10), a processor (fig 1), an equipment database (inherent in that there is shown to be information stored on

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the equipment) with payload standard information (what type of payload the vehicle can carry).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-6,8-10,14,20-22,24-26,30,31,38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helmlly.

Helmlly discloses a system as discussed above.

As to claims 4,5,20,21, Helmlly discloses obtaining the empty weight (col 2, lines 20-22), as Helmlly discloses it as being used more than once, it would inherently be done for two or more pieces of equipment of the equipment type (tractor-trailer). Helmlly does not, however, teach averaging the weights of multiple equipments (fleet or not). It would have been obvious to one of ordinary skill in the art to average the weights of

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multiple trucks for statistical purposes such as determining an average for all trucks of the same type.

As to claims 6,22 it would be inherent that a target payload is that which is added to the empty weight to achieve target payload, therefore, it would have been obvious to do this subtraction to determine the proper load.

As to claims 8,10,26, applicant has shown the percentage of acceptable overload to be old and well known in the art (paragraphs 2-6, starting on pg 1 of the specification of the instant application), as such, it would have been obvious to one of ordinary skill in the art to determine the percentages as the applicant has shown that this is well known. Compliance would have been checked using this standard.

As to claims 9,24, Helmly would have determined this if the payload weights were above the maximum threshold.

As to claims 14,30, it would have been obvious to one of ordinary skill in the art to check future payload information based on an analysis of previous information. For instance, if a driver indicated that a legal payload made the truck difficult to control on certain roads, the payload could be reduced for safety purposes.

As to claim 25, it would have been obvious to one of ordinary skill in the art to use the lesser of these values to ensure that the truck is compliant.

As to claim 38, it would have been obvious to one of ordinary skill in the art to obtain payload compliance data to check for compliance as overloading a vehicle could void the warranty.

As to claim 39, it would have been obvious to have a standard and to determine the numbers as this would quantify the results.


Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US PAT 4,588,038 to Takagi discloses a method of measuring compliance of payloads.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Fisher whose telephone number is 571-272-6804. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MF 
3/19/16

Michael J. Fisher

Patent Examiner
GAU 3629